
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

MELVIN L. MOBLEY, III,

Plaintiff,

*versus*MAXWELL VINE, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:17-CV-378

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Melvin L. Mobley, III, a prisoner previously confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Maxwell Vine, Jherick M. Cambell, James Cortes, and Miguel A. Martinez Villareal.

The court ordered that this matter be referred to the United States Magistrate Judge for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends granting Defendants' Motion for Summary Judgment (#164).

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit.

Plaintiff filed a step one grievance (#2017143913) about the alleged use of force and denial of medical treatment, which was denied on June 26, 2017. Plaintiff filed a step two grievance on July 13, 2017. The step two grievance was returned to him without a reply from prison officials because Plaintiff did not follow the procedural requirements for filing the grievance. *See Woodford v. Ngo*, 548 U.S. 81, 90-91 (2006) (holding that proper exhaustion requires compliance with an agency's procedural rules). Plaintiff's objections do not point to any competent summary judgment evidence suggesting there is a fact issue on whether Plaintiff exhausted administrative remedies by filing his step two grievance in a procedurally correct manner. Because the competent summary judgment evidence shows that Plaintiff did not exhaust administrative remedies before filing this action, Defendants are entitled to summary judgment.

ORDER

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#164) is **ADOPTED**. Defendants' Motion for Summary Judgment (#138) is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 28th day of September, 2021.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE